(1) Supreme Court, U.S.
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No. 99-

IN THE

# Supreme Court of the United States

MATTHEW F. HALE,

*Petitioner,*

*v.*

THE COMMITTEE ON CHARACTER AND FITNESS OF THE ILLINOIS BAR, and THE ILLINOIS BAR,

*Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE ILLINOIS SUPREME COURT

## PETITION FOR A WRIT OF CERTIORARI

ROBERT HERMAN
*Counsel of Record*
SCHWARTZ, HERMAN & DAVIDSON
University Club Tower
1034 South Brentwood Blvd.
Suite 1800
St. Louis, MO 63117
(314) 862-0200

ANITA RIVKIN-CAROTHERS
33 North LaSalle
Suite 3300
Chicago, IL 60602
(312) 641-2901

*Attorneys for Petitioner*

157665

Counsel Press LLC
(800) 274-3321 • (800) 359-6859

52PP

## QUESTIONS PRESENTED

1) Whether the Illinois Bar Committee on Character and Fitness violates the First and Fourteenth Amendments to the United States Constitution by establishing orthodox religious and political beliefs to which a Bar applicant must subscribe as a condition of admission and by refusing admission to Petitioner because his beliefs are contrary to the letter and spirit of the Illinois Bar Rules of Professional Conduct and Petitioner engaged in offensive speech outside the scope of a legal professional relationship.

2) Whether the Illinois Bar Committee on Character and Fitness violates the First Amendment and the Equal Protection and Due Process clauses of the Fourteenth Amendment by broadly defining the bar admission criteria of good moral character to include an examination of Petitioner's religious and political beliefs and advocacy.

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## OPINIONS BELOW

The order of the Illinois Supreme Court is reported at Ill. M.R. 16075 (App., *infra*). The opinion of Justice Heiple, dissenting from the order, is reported at M.R. 16075 (App., *infra*). The findings and conclusions of the Committee on Character and Fitness are unreported. (App., *infra*). The decision of the Inquiry Panel is unreported (App., *infra*).

## STATEMENT OF JURISDICTION

The Illinois Supreme Court entered its order on November 12, 1999. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

## STATEMENT OF THE CASE

Matthew Hale graduated from the School of Law, Southern Illinois University at Carbondale in 1998. Mr. Hale passed the Illinois Bar examination and applied for admission to the Illinois Bar. The Illinois Bar Inquiry Panel refused to certify Mr. Hale for admission to the Illinois Bar, because "[t]he Bar of Illinois cannot certify someone as having good moral character and general fitness to practice law who has dedicated his life to inciting racial hatred for the purpose of implementing those views." (App., *infra*). The Inquiry Panel held that Hale is

> free, as the First Amendment allows, to incite as much racial hatred as he desires and attempt to carry out his life's mission of depriving those he dislikes of their legal rights. But in our view he cannot do this as an officer of the court.

(App., *infra*). Following appeal and hearing, the Committee on Character and Fitness affirmed Hale's exclusion from the bar, holding that "[t]he question before this panel is whether Mr. Hale can put aside his beliefs and comply with the rules of Professional Conduct." Committee decision p. 4. (App., *infra*). The Illinois Supreme Court denied review, (App., *infra*) which had the effect of making the Committee's decision final. *In re Summers*, 325 U.S. 561, 65 S. Ct. 1307, 89 L. Ed. 1795 (1945). Illinois Supreme Court Justice Heiple, dissenting from denial of review, opined that review should have been granted on the grounds that the Committee rejected Hale for his "open advocacy of racially obnoxious beliefs." Opinion of Illinois Supreme Court (Justice Heiple dissenting). (App., *infra*).

**A. Hale met his burden to establish his good moral character.**

Hale presented affidavits attached to his bar application attesting to his good moral character. During the Committee hearing, Hale presented the testimony of attorney Brian McPheters, who had employed Hale as a law clerk. McPheters vouched for Hale's honesty, integrity, candor, industriousness, conscientiousness towards his work, professional responsibility, and trustworthiness. Mr. Hale also presented testimony from his father, several acquaintances within his religious/political movement, and members of his church who testified that Mr. Hale is a man of principled conviction, a man of honesty and integrity, is loyal to his country and committed to the principles of the United States Constitution, the Illinois Constitution and Illinois law. The Committee did not challenge the credibility of Hale's character witnesses.

Mr. Hale testified that he is now and always has been willing to swear to protect and defend both the United States Constitution and the Constitution of the State of Illinois and to protect, defend, and comply with the laws of the State of Illinois and professional rules of the Illinois Bar. Mr. Hale testified that he would abide by all laws and regulations respecting all rights of minorities. Mr. Hale testified that he would work within the system to change the laws with which he personally disagrees, but rejects unlawful and violent action as a means of social change.

The Committee called no witnesses.

**B. The Committee's rejection of Hale turned on his religious and political beliefs.**

The Committee extensively cross-examined Hale about his beliefs.[1] The Committee repeatedly challenged Hale whether his beliefs were consistent with the duties and responsibilities of lawyers. Hale candidly admitted his rejection of racial equality, that he is publicly opposed to the current judicial interpretation of the Equal Protection Clause of the Fourteenth Amendment, and that he would work peaceably and within the system to change the laws to conform to his own view of racial politics. The Committee reminded Hale that his beliefs were controversial and asked for assurance that Hale could comply with his professional responsibilities, given his beliefs. In his closing argument,

1. *See, e.g.*, Question of Member Perrington: "I'm still not clear on what you say you believe in and what you do and let me ask you a couple of questions to see if I can help clarify that." Transcript, p. 233. Statement of Chairman Lustfeld: "This is really not about your beliefs except as they might be indicative of your character and fitness to be a member of the Bar." Transcript, p. 239.

the Committee's counsel urged the Committee to exclude Hale from the bar because of his failure to understand that all men are created equal.

The Committee's written opinion turned upon its conclusion that "Mr. Hale's long standing and strongly held beliefs are diametrically opposed to the letter and spirit of [Illinois Bar] Rule 8.4(a)5." The Committee limited its discussion of Mr. Hale's history to three prior acts of advocacy, specifically relying upon: the Roberson letter; the order of protection entered against Hale for offensive speech; and Hale's academic probation for distributing racist flyers.

The Roberson letter was written by Hale in response to a newspaper editorial regarding affirmative action. The letter concluded:

> When the Hell are people of your ilk going to face the fact that the nigger race is inferior in intellectual capacity? You have examples all around you and yet you continue to cling to the misbegotten equality myth, which is not only destroying our universities but also our whole country. Is it going to take your rape at the hands of a nigger beast or your murder before you become aware of the problem?

The letter addressed Hale's vehement objection to race-mixing: the core concern of his political and religious movement. Hale testified that the letter was written in a personal and private capacity. In response to the Committee's question as to whether he would write such a letter as a lawyer, Hale replied that "[t]here's a difference between a lawyer or party and a personal letter to someone else. . . .

The rules of professional responsibility, I don't think, apply to a fellow in his own house writing his own letter to somebody, to something completely unrelated to law."

The order of protection was entered *ex parte* against Hale and rested solely on the allegation that Hale had, in a strictly private context and on a single instance, called the complainant a "mongrel" and a "bitch." There is no allegation that this incident represents a pattern of behavior. Further, there is no allegation of physical violence or threatening conduct. The Committee did not indicate that this trivial and isolated incident would serve as grounds for exclusion apart from the inflammatory racial rhetoric.

The Committee also cites an academic probation imposed because Hale distributed racist flyers without prior approval of the school administration. There is no allegation that this incident, divorced from the content of Hale's speech, would serve as independent grounds for exclusion from the bar.[2]

The Committee does not claim that any of these incidents constitute fighting words, a sanctionable threat of violence, or, in the applicable context, a violation of any law or professional rule. The Committee's objection is to the offensiveness of the speech content.

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2. Hale was examined regarding his appearance at a prayer breakfast, where he was alleged to have given a Nazi-like salute. Hale was also examined regarding an obstruction of justice charge of which he was ultimately exonerated. The Committee did not cite either incident in its opinion as a basis for Hale's exclusion.

## REASONS FOR GRANTING THE WRIT

The Illinois Bar Committee on Character and Fitness holds that the content of Hale's political and religious speech and beliefs may be used as a basis for excluding him from the practice of law. In a time when political correctness runs rampant through our government and academia, and political, social and religious litmus tests are becoming the norm for appointment to the Bench, the need for guidance from this Court is acute. The issues raised herein rest squarely on Federal Constitutional issues and cannot be resolved on independent state grounds. This case is a timely and rare opportunity to provide that guidance, since the opinion of the Committee, adopted by the Illinois Supreme Court, rests on Petitioner's advocacy of politically unpopular beliefs and speech, conducted entirely outside the scope of any professional legal relationship. Moreover, the decision below is an important federal question decided in a way that conflicts with relevant decisions of this Court.

## THE DECISION OF THE ILLINOIS COMMITTEE ON CHARACTER AND FITNESS CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT

### A. The Bar may not exclude Petitioner from the practice of law on the basis of his beliefs.

Freedom to believe what one will "is absolute." *Cantwell v. Connecticut*, 310 U.S. 296, 303, 60 S. Ct. 900, 903, 84 L. Ed. 1213 (1940). The state may not constitutionally condition admission to the Bar upon the applicant swearing allegiance to social and political principles and professing them as his own. "If there is any fixed star in our constitutional constellation, it is that no official high or petty,

can prescribe what shall be orthodox in politics, nationalism, religion or other matters of opinion or force citizens to confess by word or act their faith therein." *West Virginia State Board of Education v. Barnette*, 314 U.S. 624, 642, 63 S. Ct. 1178, 1187, 87 L. Ed. 1628 (1943). Since Bar admission committees are prohibited from inquiring "about a man's views and associations solely for the purpose of withholding a right or benefit because of what he believes," *Baird v. State Bar of Arizona*, 401 U.S. 1,7, 91 S. Ct. 702, 706, 27 L. Ed. 2d 639 (1971), they should equally be prohibited from barring an applicant on the basis of his known beliefs.

The Committee cannot evade the constitutional proscription against punishing beliefs by claiming Mr. Hale's beliefs will likely lead him into conduct violative of the professional rules, *see Bond v. Floyd*, 385 U.S. 116, 87 S. Ct. 339, 17 L. Ed. 2d 235 (1966), in which this Court rejected as unconstitutional the Georgia House of Representatives' exclusion of Julian Bond on the supposition that Mr. Bond's prior speech demonstrated that he would be unable to uphold the oath of office.

As in *Bond*, the speech punished herein is at the core of the protection afforded by the First Amendment. The Committee has made it clear in its opinion that Hale is being excluded expressly because the political, social and religious convictions he expresses offend the Committee's notions of fairness and justice. The Inquiry Panel enumerated "Fundamental Truths" to which the Bar was committed: those at odds with those fundamental truths cannot be admitted as an officer of the court. If the Bar is allowed to establish such orthodoxy of belief in this case, what will prevent the bar from establishing orthodox views on other social and

constitutional issues such as abortion or state's rights? "The very purpose of the Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts." *Barnette*, *id.* 319 U.S. at 638, 63 S. Ct. at 1185.

**B. The Bar cannot exclude Petitioner on the basis of his political and religious speech.**

Lawyers do not relinquish their constitutional rights as a condition of practicing law. *In Re Primus*, 436 U.S. 412, 98 S. Ct. 1893, 56 L. Ed. 2d 417 (1978). The Illinois Bar does not, and cannot, assert a compelling governmental interest unrelated to the suppression of expression to sanction the exercise of First Amendment activities wholly unrelated to the practice of law. *Gentile v. State Bar of Neveda*, 501 U.S. 1030, 111 S. Ct. 2720, 115 L. Ed. 2d 888 (1991). The assertion that the Rules of Professional Conduct constrain a lawyer's beliefs and speech in every aspect of his life is astonishingly overbroad and cannot survive strict scrutiny.

**C. The Committee's definition of good moral character to include Petitioner's beliefs and advocacy is overbroad, intrudes into First Amendment protected areas, and violates the equal protection and due process clauses of the Fourteenth Amendment.**

The term "good moral character" is "[s]uch a vague qualification, which is easily adapted to fit personal use and predilections, [it] can be a dangerous instrument for arbitrary and discriminatory denial of the right to practice law." *Konigsberg v. State Bar of California*, 353 U.S. 252, 262-3, 77 S. Ct. 722, 728, 1 L. Ed. 2d 810 (1957). The Committee's

attempt to define beliefs and advocacy as the basis of good moral character was rejected *in Schware v. Board of Bar Examiners*, 353 U.S. 232, 77 S. Ct. 752, 1 L. Ed. 796 (1957). "Mere unorthodoxy in the field of political and social ideas does not as a matter of fair and logical inference, negate good moral character." *Id.* at 353 U.S. 232, 244, 77 S. Ct. 752, 759 (internal brackets and quotations removed).

## THIS ISSUE IS IMPORTANT BECAUSE THE ATTEMPT TO ENFORCE POLITICAL ORTHODOXY PRESENTS A DANGER TO THE VITALITY AND INDEPENDENCE OF THE BAR.

The imposition of politically acceptable beliefs and advocacy as a precondition to Bar membership directly undermines the core protection of beliefs and advocacy afforded by the First Amendment. Justice Black's admonition in *Wadmond* is not stripped of its wisdom merely because it appears in a dissent: "To force the Bar to become a group of thoroughly orthodox, time-serving, government-fearing individuals is to humiliate and degrade it." *Law Students Civil Rights Council, Inc. v. Wadmond*, 401 U.S. 154, 181, 91 S. Ct. 720, 735 (1971) (Black, dissenting).

## CONCLUSION

For these compelling reasons of constitutional importance, the Court should grant this Writ of Certiorari.

Respectfully submitted,

ROBERT HERMAN
*Counsel of Record*
SCHWARTZ, HERMAN & DAVIDSON
University Club Tower
1034 South Brentwood Blvd.
Suite 1800
St. Louis, MO 63117
(314) 862-0200

ANITA RIVKIN-CAROTHERS
33 North LaSalle
Suite 3300
Chicago, IL 60602
(312) 641-2901

*Attorneys for Petitioner*

# APPENDIX

## APPENDIX A — LETTER ORDER OF THE SUPREME COURT OF ILLINOIS DATED NOVEMBER 12, 1999

**SUPREME COURT OF ILLINOIS**
**SUPREME COURT BUILDING**
**SPRINGFIELD 62701**

* * *

November 12, 1999

Mr. Robert Herman
Schwartz, Herman and Davidson
1034 South Brentwood Boulevard
Suite 1800
St. Louis, MO 63117

TODAY THE FOLLOWING ORDERS WERE ENTERED:

M.R.16075 — In re: Matthew F. Hale, petitioner.

Petition by Matthew F. Hale, pursuant to Supreme Court Rule 708(d), requesting a full review by the Illinois Supreme Court of the findings and conclusions of the Character and Fitness Committee dated June 30, 1999, and a request for oral argument. Motion ***denied***.

Order entered by the Court.

Motion by petitioner for leave to file reply to Character and Fitness Committee's response. Motion ***denied***.

Order entered by the Court.

*Appendix A*

*MISCELLANEOUS RECORD*

M.R.16075 — In re: Matthew F. Hale, petitioner.

Petition by Matthew F. Hale, pursuant to Supreme Court Rule 708(d), requesting a full review by the Illinois Supreme Court of the findings and conclusions of the Character and Fitness Committee dated June 30, 1999, and a request for oral argument. Motion ***denied***.

Order entered by the Court.

Motion by Committee on Character and Fitness for leave to supplement the record instanter with a proffer and argument concerning events occurring after the Hearing Panel's decision. Motion ***denied***.

Order entered by the Court.

Motion by Illinois State Bar Association (ISBA) for leave to participate as amicus curiae and to file instanter brief amicus curiae in support of the Illinois Supreme Court's Committee on Character and Fitness. Motion ***denied***.

Order entered by the Court.

Motion by petitioner for leave to file reply to Character and Fitness Committee's response. Motion ***denied***.

Order entered by the Court.

## APPENDIX B — JUSTICE HEIPLE DISSENT FROM SUPREME COURT ORDER

M.R. 16075

*In re* MATTHEW F. HALE, Petitioner.

JUSTICE HEIPLE, dissenting:

Petitioner Matthew F. Hale applied for admission to practice law in Illinois. The Committee on Character and Fitness concluded that his application should be denied. Petitioner now asks this court to review the Committee's decision. Thus, the question before the court at this juncture is not whether petitioner should be licensed to practice law. The question, rather, is whether the Supreme Court should consider his appeal. Because the petition raises questions of constitutional significance that should be resolved openly by this court, I dissent from the majority's refusal to hear this case.

The crux of the Committee's decision to deny petitioner's application to practice law is petitioner's open advocacy of racially obnoxious beliefs. The Hearing Panel found that petitioner's "publicly displayed views are diametrically opposed to the letter and spirit" of the Rules of Professional Conduct. The Inquiry Panel found that, in regulating the conduct of attorneys, certain "fundamental truths" of equality and nondiscrimination "must be preferred over the values found in the First Amendment." Petitioner contends that the Committee's use of his expressed views to justify the denial of his admission to the bar violates his constitutional rights to free speech. That constitutional question deserves explicit, reasoned resolution by this court.

Instead, the court silently accepts the conclusion of the Committee, which asserted that "[t]his case is not about Mr. Hale's First Amendment rights." To the contrary, this case clearly impacts both the first amendment to the federal Constitution and article I, section 4, of the Illinois Constitution.

In addition, the Committee's ruling on petitioner's application presents a second important issue which this court should address. The Committee seems to hold that it may deny petitioner's application for admission to the bar without finding that petitioner has engaged in any specific conduct that would have violated a disciplinary rule if petitioner were already a lawyer. The Committee merely speculates that petitioner is "on a collision course with the Rules of Professional Conduct" and that, if admitted, he will *in the future* "find himself before the Attorney Registration and Disciplinary Commission." I believe this court should address whether it is appropriate for the Committee to base its assessment of an applicant's character and fitness on speculative predictions of future actionable misconduct.

The question also arises: If all of petitioner's statements identified by the Committee had been made after obtaining a license to practice law, would he then be subject to disbarment? That is to say, is there one standard for admission to practice and a different standard for continuing to practice? And, if the standard is the same, can already-licensed lawyers be disbarred for obnoxious speech?

The Illinois Supreme Court is the licensing authority for all Illinois lawyers. Its rules cover all aspects of admission

to the bar and professional conduct thereafter. It has the power to license, regulate, and to disbar. The issues presented by Mr. Hale's petition are of such significant constitutional magnitude that they deserve a judicial review and determination by this court.

For the reasons given, I respectfully dissent from the denial of the petition for review.

## APPENDIX C — FINDINGS AND CONCLUSIONS OF THE COMMITTEE ON CHARACTER AND FITNESS OF THE SUPREME COURT OF ILLINOIS FOR THE THIRD JUDICIAL DISTRICT DATED APRIL 10, 1999

**BEFORE THE COMMITTEE ON CHARACTER AND FITNESS SUPREME COURT OF ILLINOIS THIRD JUDICIAL DISTRICT**

| | |
|---|---|
| In Re: | Application of Matthew F. Hale |
| Commissioners present: | Gordon L. Lustfeldt<br>Thomas Dunn<br>Clark Erickson<br>Charles Marshall<br>L. Lee Perrington |
| Hearing date: | April 10, 1999 |
| Counsel for Applicant: | Robert Herman |
| Counsel adverse to Applicant: | George Murtaugh |
| Decision: | Not recommended for certification |
| Vote: | 5 no; 0 yes |

### FINDINGS AND CONCLUSIONS

A hearing was held April 10, 1999 at the Will County Courthouse. All the above listed persons were present, pursuant to prior notice. The hearing was open to the public,

at the applicant's request. Due to the illness of Committee member Louis Bertani, L. Lee Perrington, a member of the Second District Character and Fitness Committee, was substituted, without objection.

The commissioners (hereinafter referred to as the panel), heard the evidence and arguments of counsel. At the conclusion of the April 10 hearing, counsel for the applicant requested an opportunity to file briefs, which was allowed without objection. The panel has considered the briefs submitted by both sides. The panel also granted the motion of the American Civil Liberties Union of Illinois to file an amicus curiae brief, and has considered same.

Because counsel were allowed a total of 20 days after the hearing to submit briefs, there was no way the panel could vote within 21 days of the hearing. Therefore, after allowing the filing of briefs, the panel decided to defer their vote for an additional 21 days, pursuant to Rule 5.3(e) of the Rules of Procedure for Character and Fitness Committees. This was known by the parties at the conclusion of the April 10 hearing. The members of the panel later conferred within the period set by the Rules, and voted prior to the end of the extended voting period.

This case is not about Mr. Hale's First Amendment rights. He is certainly entitled to his own beliefs, and the free expression thereof. The issue here is whether Mr. Hale possesses the requisite character and fitness for admission to the practice of law. The applicant has the burden of proving by clear and convincing evidence that he has the requisite

character and fitness to be admitted to the practice of law. (Rule 4.1, Rules of Procedure; *In Re Loss* 119 Ill. 2d 186 (1987)).

Having considered all the evidence, and having observed the witness' testimony, including that of the applicant, it is the unanimous decision of this panel that the applicant has not met his burden of proof, and that he should not be recommended for certification. While relying on the entire record in support of its decision, the panel specifically notes the following:

1. The applicant expressed no difficulty in taking the necessary oath to become an attorney. However, a willingness to take the oath does not end our inquiry. Attorneys are also required to comply with the Illinois Rules of Professional Conduct (Article VIII, Supreme Court Rules). It is axiomatic that an applicant who will not or cannot abide by the Rules of Professional Conduct, should not be admitted to the bar. Such a person will quickly run afoul of these rules, often leaving a victim in his wake. Having considered the evidence, and having observed Mr. Hale's testimony, the panel finds that he has failed to show that he will abide by the Rules of Professional Conduct.

In the first instance, Mr. Hale has an incorrect view as to the application of the Rules to his behavior. The substance of his testimony was that he believed these rules only applied to him when he was actually working as a lawyer, and not at any other time. This view is, of course, incorrect. The Rules of Professional Conduct govern the conduct of lawyers in all their actions. Many attorneys have been disciplined over

the years for actions outside of traditional legal activities. Even more troubling to the panel is Mr. Hale's belief that he alone will decide when the rules applied to him, and when they didn't.

Mr. Hale also made the statement (Hearing Transcript, p.269-270) that the Rules of Professional Conduct (specifically Rule 8.4(a)5 which forbids adverse discriminatory treatment of others) did not apply to his "private behavior in the exercise of his religion". In other words, if Mr. Hale believed that what he was doing was in the exercise of his religion (as determined by himself) then the Rules of Professional Conduct would not apply to him. Mr. Hale's own words lead to the conclusion that he intends to follow the Rules only when he feels like it, and feels free to disregard them at any time, as he deems necessary.

Rule 8.4(a)5 of the Rules of Professional Conduct states as follows:

> (a) A lawyer shall not:
>
> (5) engage in conduct that is prejudicial to the administration of justice. In relation thereto, a lawyer shall not engage in adverse discriminatory treatment of litigants, jurors, witnesses, lawyers, and others, based on race, sex, religion, or national origin. This subsection does not preclude legitimate advocacy when these or similar factors are issues in the proceeding;

*Appendix C*

Mr. Hale is the leader of an organization called the Worldwide Church of the Creator. In this capacity he maintains and supports an Internet website which details his views. Mr. Hale's publicly displayed views are diametrically opposed to the letter and spirit of Rule 8.4(a)5. One document that Mr. Hale believes in is entitled "The Sixteen Commandments of Creativity". This document is part of the record herein. Commandment 4 states: "The guiding principle of all your actions shall be: What is best for the White Race?". Commandment 6 states: "Your first loyalty belongs to the White Race." Commandment 7 states: "Show preferential treatment in business dealings with members of your own race. Phase out all dealings with Jews as soon as possible. Do not employ niggers or other coloreds.". In another document on his website entitled "The Essence of the one and only true White Racial Religion – Creativity" he states: "What is good for the White race is the highest virtue; What is bad for the White Race is the ultimate sin".

Mr. Hale's long standing and strongly held beliefs are in absolute contradiction to the letter and spirit of Rule 8.4(a)5. He is absolutely entitled to hold these beliefs, but at the same time the public and the bar are entitled to be treated fairly and decently by attorneys. The question before this panel is whether Mr. Hale can put aside his beliefs and comply with the Rules of Professional Conduct.

Mr. Hale's statement that he can comply with the Rules, cannot be the end of the inquiry. If it is, then there is no need for a Character and Fitness hearing; the applicant's statement is conclusive. This panel believes that where there is evidence of other character and fitness problems that an

inquiry into whether the applicant can comply with the Rules of Professional Conduct is justified. The panel is aware of the United States Supreme Court cases cited by the applicant on this issue, but in all of them there was no evidence of bad character of the applicant; there is such evidence in this case (eg. academic probation, an Order of Protection, the Roberson letter). Under such circumstances, Mr. Hale cannot wrap himself in the First Amendment and avoid any inquiry into his character and fitness. Mr. Hale's beliefs do not exempt him from obeying the same rules as every other attorney.

Having considered the evidence, and after observing Mr. Hale's testimony, the panel finds insufficient evidence that he will uphold the Rules of Professional Conduct.

2. The panel is also concerned about a letter that Mr. Hale sent to a Ms. Roberson on July 22, 1995. At that time, Mr. Hale was a 24 year old college graduate, about to enter law school that fall. The letter was in response to Ms. Roberson's published comments in support of Affirmative Action programs. The actual letter is part of the record herein. To say that the letter is insulting and totally inappropriate, is to put it mildly. To suggest, as the applicant did in his brief, that the letter does not contain "fighting words" and is therefore protected from our scrutiny by the First Amendment is simply erroneous.

Mr. Hale was questioned about the letter by the panel. He had the chance to clearly and positively repudiate it, to attribute it to youth, or poor judgment — he did not do so. In fact, he stated that this letter, referring to Ms. Roberson's

rape or murder at the hands of a "nigger beast" was not beyond the pale of a letter a lawyer would write. (This statement is contained on p. 243 of the transcript at lines 21 and 22. The word "payoff" on line 22 is incorrect, it should be "pale of"). Mr. Hale also testified that he did not feel that the reference to a rape or murder by a "nigger beast" was insulting. (Transcript p. 217).

This statement shows a monumental lack of sound judgment. This lack of judgment will surely set the applicant, if admitted to the bar, on a collision course with the Rules of Professional Conduct. Is there any doubt that a lawyer who wrote such a letter would find himself before the Attorney Registration and Disciplinary Commission? Yet, based on the evidence, and his own statements it is clear to the panel that Mr. Hale would do this kind of thing again if admitted to the bar.

Finally, the panel believes that Mr. Hale was not candid and open with the panel during the hearing. The panel heard his testimony, but more importantly observed his demeanor while testifying. There are many occasions in the record when he answered a question with a question, or answered with a speech or narrative which was not responsive to the question. A good example of this lies in his testimony about his alleged disruption of a prayer breakfast at Bradley University (Transcript pp. 226-232; 245-247).

In the preamble to the Rules of Professional Conduct it is stated: "The practice of law is a public trust. Lawyers are the trustees of the system by which citizens resolve disputes among themselves, punish and deter crime, and determine

their relative rights and responsibilities toward each other and their government." Because of the power and influence that lawyers have over others, and because of their vital position in our system of justice, there is a high standard for admission to the bar, and the burden is on the applicant to prove he should be admitted.

The panel has reviewed the entire record, and based on that record, and in light of the foregoing finds that Mr. Hale has not met his burden of proof and therefore has voted that he not be recommended for certification.

## APPENDIX D — DECISION OF INQUIRY PANEL OF THE COMMITTEE ON CHARACTER AND FITNESS OF THE SUPREME COURT OF ILLINOIS FOR THE THIRD APPELLATE DISTRICT DATED DECEMBER 16, 1998

BEFORE THE COMMITTEE ON
CHARACTER AND FITNESS
FOR THE THIRD APPELLATE DISTRICT OF THE
SUPREME COURT OF ILLINOIS

IN THE MATTER OF:

THE APPLICATION FOR ADMISSION TO THE BAR
OF MATTHEW F. HALE

### DECISION OF INQUIRY PANEL

***Introduction***

Matthew F. Hale has applied for admission to the Bar of Illinois after having passed its examination conducted in the summer of 1998. Pursuant to Rule 5.1a of the Rules of Procedure for the Committees on Character and Fitness his application was referred to a member of the Third District Committee for consideration. After reviewing the application that member was not prepared to recommend the certification of Mr. Hale to the Illinois Board of Admissions.

Accordingly, pursuant to Rule 5.2a, the Chairperson of the Third District Committee assigned the application to this Inquiry Panel for further review and examination. Because a majority of the members of the Inquiry Panel have voted to withhold the certification of the applicant, the matter will

now be referred to a Hearing Panel pursuant to Rule 5.3a. In declining to certify the applicant and thereby causing the matter to be referred to a Hearing Panel, we are setting forth our reasons for this decision in some detail.

Rule 4.1 of the Rules of Procedure places the burden on the applicant to prove by clear and convincing evidence that he has the requisite character and fitness for admission to the practice of law. Nonetheless, the denial of a request for admission results in serious adverse consequences for the applicant, as noted by the United States Supreme Court in *Konigsberg v. State Bar of California*, 353 U.S. 252, 257-258, 1 L Ed. 2d 810, 816, 77 S.Ct. 722 (1957):

> The Committee's action prevents him from earning a living by practicing law. This deprivation has grave consequences for a man who has spent years of study and a great deal of money in preparing to be a lawyer.

Additionally, as discussion will demonstrate, the reasons for our decision relate to the applicant's active advocacy of his core beliefs. When an issue of that type is injected into the reasons for denial of certification, "a heavy burden lies" upon the State to demonstrate that "a legitimate state interest" is sought to be protected. *Baird v. Arizona*, 401 U.S. 1, 6-7, 27 L.Ed. 2d 639, 647, 91 S.Ct. 702 (1971). Under these circumstances, the reasons for voting to deny certification should be carefully explained.

There is an additional reason for carefully explaining the Inquiry Panel's decision in advance of an opinion to be

issued by the Hearing Panel. While the Hearing Panel may well develop in greater detail the evidence which will inform its decision, based upon a review of the applicant's record to date, our expectation is that the evidence will be largely undisputed, and that the ultimate decision will rest primarily upon an analysis of constitutional principles, as well as the role of courts and the Bar in American society and our system of government. Therefore, an early start at a discussion of these overarching issues is appropriate.

***The Facts***

Matthew F. Hale is 27 years old, attended undergraduate school at Bradley University in Peoria and received a J.D. degree in 1998 from Southern Illinois University School of Law at Carbondale. By his frank admission he is an avowed racist who, since his teenage days, has been actively involved in promoting white supremacy through organizations and by the distribution of literature. This literature portrays blacks, Jews, and other minorities in an extreme negative light. Attached to this decision is a short autobiography of Mr. Hale.

Mr. Hale is currently the head of an organization called the World Church of the Creator which is claimed to be a religious organization. His title as head of this church is Pontifex Maximus (Supreme Leader). In the attached autobiography, Mr. Hale has stated that "he would dedicate his life to Creativity," referring to the World Church of the Creator. This religion, according to its founder, Ben Klassen, has as one of its major tenets the hatred of Jews, blacks and other colored people.

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Mr. Hale's church admires Adolph Hitler and the National Socialism movement as practiced in Germany, except that it holds Hitler was mistaken in promoting only German nationalism. Instead, his church believes that Hitler's ideas relating to racial superiority should have been applied for the benefit of the entire "white race as opposed to just Germans.

Mr. Hale and his church disavow violence and an intention to seek the forcible overthrow of the United States Government. However, Mr. Hale stated in his interview with us that if his organization would gain power by peaceable means it would call for the deportation of Jews, blacks and others whom his church refers to as "mud races." The United States would then become a country for members of the "white race" only.

The Inquiry Panel's interview with Mr. Hale occurred November 25, 1998. At that time, Mr. Hale was extremely polite and answered all questions quite candidly. He is intelligent and articulate. He stated that after becoming a lawyer he would continue his activities as leader of his church, including his distribution of racist literature. He also plans to be active on the Internet to promote his church's racist views. (See p. 11, *infra.*)

On the issue of moral character, he argued that his frank and open admission of the advocacy of racism shows greater moral character than do lawyers and others who are in fact racist but who utter such thoughts only in privacy.

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Mr. Hale was asked whether or not he could take the oath to support the United States Constitution and the Constitution of the State of Illinois in good conscience. See 705 ILCS 205/4. He unhesitatingly answered that he would have no difficulty even though, based on his beliefs, he obviously would be in substantial disagreement with current interpretations of the constitutions. He likened his situation to that of a judge or jury whose duty it is to follow the law even though they may disagree with it.

In connection with the oath, he was shown Article 1, § 20 of the Constitution of the State of Illinois which condemns "communications that portray criminality, depravity or lack of virtue in, or that incite violence, hatred, abuse or hostility toward, a person or group of persons by reason of or by reference to religious, racial, ethnic, national or regional affiliation." In response, Mr. Hale said that to the extent this Illinois constitutional provision limited "communications," it would run afoul of the First Amendment to the Constitution of the United States and therefore would not be binding on him.[1]

Additionally, Rule 8.4(a)(5) of the Rules of Professional Conduct for lawyers was brought to his attention. Mr. Hale was asked if he could abide by that rule if admitted to the Bar. The rule, in part, states that a lawyer shall not

> engage in conduct that is prejudicial to the administration of justice. In relation thereto, a

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1. This Illinois constitutional provision appears to be advisory only and not susceptible of being violated.

> lawyer shall not engage in adverse discriminatory treatment of litigants, jurors, witnesses, lawyers, and others, based on race, sex, religion, or national origin.

Again, Mr. Hale stated that he would have no problem with following this rule, reaffirming his statements that he would follow the law until such time as he could have it changed by peaceful means. He also said that in a recent employment in Champaign where he worked as a law clerk for a few months, he dealt with black clients and engaged in no acts of racism toward them. The accuracy of this statement was confirmed by independent inquiry.

### *Analysis Of Moral Character*

As noted, the applicant must establish his "good moral character and general fitness to practice law" "by clear and convincing evidence." (Supreme Court Rules 708(b), 709(b) and Rule 4.1 of Rules of Procedure of Committees on Character and Fitness.) If these requisites may be established by simply showing an absence of criminal conduct in the past and having one or more persons vouch for one's character, Mr. Hale has established these requisites by clear and convincing evidence.[2]

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2. Mr. Hale was convicted of two city ordinance violations related to the advocacy of his beliefs. The Inquiry Panel attaches no significance to these convictions because countless individuals have been admitted to the Bar with more serious criminal violations. Additionally, the Inquiry Panel has doubts as to the legality or at least the appropriateness of these convictions because they related to the exercise of constitutionally protected activity and Mr. Hale may have been selectively prosecuted on account of his views.

On the other hand, if the lack of good moral character and general fitness to practice law may be judged on the basis of active advocacy that attempts to incite hatred of members of various groups by vilifying and portraying them as inferior and robbing them of human dignity, Mr. Hale has not established good moral character or general fitness to practice law. As indicated, Mr. Hale's life mission is to bring about peaceable change in the United States in order to deny the equal protection of the laws to all Americans except perhaps those that his church determines to be of the "white race." Under any civilized standards of decency,[3] the incitement of racial hatred for the ultimate purpose of depriving selected groups of their legal rights shows a gross deficiency in moral character, particularly for lawyers who have a special responsibility to uphold the rule of law for all persons.[4]

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3. See references in the United Nations Charter and the UN's Universal Declaration of Human Rights at notes 8 & 9 on p. 13, *infra*.

4. In the recent case of *In re A.L.*, No. 3-98-96 (3rd Dist. 11/13/98), the Appellate Court cited bigotry as evidence of depravity which has been defined as the opposite of good moral character. See *In re Abdullah*, 85 Ill.2d 300, 53 Ill.Dec. 246, 248, 423 N.E.2d 915, 917 (1991), which held that "depravity is 'an inherent deficiency of moral sense and rectitude.' "

Bigotry, as well as evil generally, is bottomed on irrationality. By contrast, our legal system is designed to produce rational results. Individual rights are at the cornerstone of law and justice. These rights are extolled in the Declaration of Independence, the Bill of Rights and other documents cited in this opinion. In our courts, facts

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However, even if the Illinois standards for considering moral character and general fitness to practice law allows the Committee to make a determination in this manner, the question remains as to whether or not denying certification for admission to the Bar is constitutional on that basis.

***The Constitutional Analysis***

At an earlier time the Committee on Character and Fitness might have desired to disqualify Mr. Hale on the ground that, despite his statements to the contrary, his views make it impossible for him to take the required oath "in good conscience." See, e.g., *In Re Anastaplo*, 3 Ill.2d 471, 476, 121 N.E.2d 826 (1954) and *In Re Latimer*, 11 Ill.2d 327, 336, 143 N.E.2d 20 (1957). Also see *In Re Anastaplo*, 18 Ill.2d 182, 163 N.E.2d 429 & 928 (1959), aff'd 366 U.S. 82, 6 L.Ed.2d, 135, 81 S.Ct. 978 (1961).

Moreover, the Membership Manual for his church, which is on the Internet, describes 15 attributes of a church member under a heading entitled, "The Essence of a Creator," The

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matter so that each individual is entitled to be rationally judged on the particular circumstances of his or her case, with an impartial application of the law to the facts.

But the applicant regards these considerations as irrelevant. All that matters to him is whether someone is or is not a member of the "white race," as defined by his church. Such an irrational worship of race for the ultimate purpose of determining legal rights is not only depraved and immoral, but a rejection of all that law, lawyering and judging is meant to accomplish.

number I essence listed is that "A CREATOR puts loyalty towards his own race above every other loyalty." (http://www.rahowa.com/manual.htm.) A reasonable question for the applicant is what happens when that loyalty conflicts with his oath to support the United States and Illinois Constitutions?

Additionally, even though Mr. Hale claimed to be able to abide by the Rules of Professional Conduct relating to non-discriminatory treatment, his activities in this regard arguably cast doubt on these representations. For example, in 1995, only a few weeks before he started law school, he wrote a letter to a woman who apparently had made comments in the Peoria Journal Star on racial issues that were contrary to his. In this letter he referred to "the nigger race" as "*inferior* in intellectual capacity" and condemned the "misbegotten equality myth" as "garbage" that was "destroying" "our whole country." (Emphasis in original.) He also suggested that this woman's rape or murder by a "nigger beast" might enlighten her.

With the applicant capable of such outrageous and intemperate conduct, one might have concluded that he was insincere when he said he could comply with the Rules of Professional Conduct and conscientiously take the oath. However, later cases of the United States Supreme Court suggest that these very real questions about the applicant might be a frail reed upon which to deny certification. See, e.g., *Bond v. Floyd*, 385 U.S. 116, 132, 17 L.Ed.2d 235, 245, 87 S.Ct. 339 (1966) and *Law Students Research Counsel v. Wadmond*, 401 U.S. 154, 163-164, 27 L.Ed.2d 749, 759, 91 S.Ct. 720 (1971), which appear to hold that once an oath to

support the Constitution is taken, others cannot urge that it was not taken sincerely.

Finally, an applicant cannot be denied admission to the Bar on a ground formerly announced by the Illinois Supreme Court — "that the practice of law is a privilege, not a right." *In Re Anastaplo*, 3 Ill.2d 471, 482 (1954). On the contrary, the United States Supreme Court later stated that "the practice of law is not a matter of grace, but of right for one who is qualified by his learning and his moral character." *Baird v. Arizona*, *supra*, 401 U.S. 1 at 8, 27 L.Ed.2d 639 at 648.

***Absolute First Amendment Rights vs. A Balancing Test***

The easiest resolution of Mr. Hale's application would be to certify him. This would be in accord with the view that the First Amendment is virtually absolute. By adhering to such a view, line drawing problems and degree questions are avoided, and as the dissenting opinion makes clear, the analysis for reaching a decision can be simple and direct.

Certainly statements found in some Supreme Court opinions, taken in isolation and without regard to the specific facts of the cases, might support this view. For example, in the bar admission case of *Re Stolar*, 401 U.S. 23, 28-29, 27 L.Ed. 2d 657, 663, 91 S.Ct. 713 (1971), it was stated that the State cannot "penalize petitioner solely because he personally . . . 'espouses illegal aims.' "

Nonetheless, on balance, a majority of the Inquiry Panel has concluded that the constitutional issues involving a case

precisely like this one are open,[5] and that the Illinois requirement for moral character and general fitness to practice law precludes the applicant from being certified. (See ***Analysis of Moral Character***, pp. 6-7, *supra.*)

The latest United States Supreme Court decisions relating to bar admissions located by the Inquiry Panel are over 25 years old. In 1971, the year of its most recent cases on this subject, the Court characterized its earlier opinions as containing "confusing formulas, refined reasonings, and puzzling holdings." *Baird v. Arizona*, 401 U.S. 1, 4, 27 L.Ed.2d 639, 645, 91 S.Ct. 702 (1971).

In that case, the Court, in a 5 to 4 split decision, held that "a State may not inquire about a man's views or associations solely for the purpose of withholding a right or benefit because of what he believes." 401 US. 1 at 7, 27 L.Ed.2d 639 at 647. The Court also said in that case:

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5. While First Amendment issues in this case are difficult and troublesome, we don't include "the free exercise" of "religion" among them. Our decision would be the same if Mr. Hale professed no religion, and his autobiography shows that his racist views evolved long before he discovered the World Church of the Creator. For an extensive discussion of the case law on the regulation of conduct stemming from religious beliefs, see *Employment Division v. Smith*, 494 U.S. 872, 108 L.Ed.2d 876, 110 S.Ct. 1595 (1990). "*Smith* held that neutral, generally applicable laws may be applied to religious practices even when not supported by a compelling governmental interest." *City of Boerne v. Flores*, 521 U.S. 507, __, 138 L.Ed.2d 624, 635, 117 S.Ct. 2157 (1997). The latter case invalidated the Religious Freedom Restoration Act of 1993 (42 U.S.C. §§ 2000bb, *et seq.*) which had been enacted for the purpose of overturning *Smith*.

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> The First Amendment's protection of association prohibits a State from excluding a person from a profession or punishing him *solely* because he is a member of a particular political organization or because he holds certain beliefs. (Emphasis added.) 401 U.S. 1, at 6, 27 L.Ed.2d 639 at 646-647.

A similar result in another 5 to 4 decision was reached on the same day in 1971 in the case of *Re Stolar*, 401 U.S. 23, 31, 27 L.Ed.2d 657, 665, 91 S.Ct. 713 (1971).

Neither of those decisions involved individuals who were actively involved in inciting racial hatred and who had dedicated their lives to destroying equal rights under law that all Americans currently enjoy. On the contrary, the applicants in those cases refused to reveal their views.

But in this case Matthew Hale has no interest in keeping his views a secret. In a 1997 interview that appears on the Internet, he said that "we have several websites going now. . . . We are . . . hoping to expand all these operations . . . to give people full knowledge of Creativity . . . ." (http://hatewatch.org/wcotc/haleinterview.html.) And his attached autobiography proclaims "that he looks forward to leading Creativity to worldwide White Victory!"

The case of *Elrod v. Burns*, 427 U.S. 347, 362, 49 L.Ed. 547, 559, 96 S.Ct. 2673 (1976), laid down the following formula for evaluating whether or not a public employee may have his First Amendment rights curtailed:

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> It is firmly established that a significant impairment of First Amendment rights must survive exacting scrutiny . . . . The interest advanced must be paramount, one of vital importance, and the burden is on the government to show the existence of such an interest.

Assuming that the courts would apply the stringent *Elrod* formula for public employees to bar admission cases,[6] we believe that the impairment of First Amendment rights that the Panel's decision affects does survive exacting scrutiny and that the interest advanced with respect to the role of the legal profession, hereafter to be explained, is paramount. The Supreme Court has also utilized a balancing test in public employment cases.[7] In *Pickering v. Board of Education*, 391 U.S. 563, 568, 20 L.Ed.2d 811, 817, 88 S.Ct. 1731 (1968), the Court said:

> . . . it cannot be gainsaid that the State has interests as an employer in regulating the speech of its employees that differs significantly from those it possesses in connection with regulation of the speech of the citizenry in general. The problem in any case is to arrive at a *balance*

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6. This formula appears to be in accord with the Supreme Court's statement in the bar admission case of *Baird v. Arizona*, quoted at p. 2, *supra*.

7. Public employment cases, unlike bar admission cases, usually arise where the party seeking relief already holds a governmental position and is not applying for one. See, e.g., *Perry v. Sindermann*, 408 U.S. 593, 33 L.Ed.2d 570, 92 S.Ct. 2694 (1972).

> between the interests of the teacher, as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees. (Emphasis added.)

***The Commitment Of The Bar To Fundamental Truths***

The balance that the majority chooses requires that a lawyer cannot, as his life's mission, do all in his power to incite racial and religious hatred among the populace so that it will peaceably abolish the rule of law for all persons save those of the "white race." Instead, and by rejecting Matthew Hale's application, let it be said that the Bar and our courts stand committed to these fundamental truths:

- All persons are possessed of individual dignity.[8]

- As a result, every person is to be judged on the basis of his or her own individuality and conduct, not by reference to skin color, race, ethnicity, religion or national origin.[9]

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8. In condemning communications that incite racial hatred, the Illinois Constitution, Article I, § 20, commences with the phrase, "To promote individual dignity, . . . ." Similarly, the United Nation's Charter refers to "the dignity and worth of the human person" and the UN's Universal Declaration of Human Rights, which was 50 years old this month, recognizes "the inherent dignity . . . of all members of the human family."

9. The documents cited in the preceding footnote condemn discrimination in all forms and in general echo our Declaration of Independence which holds that "all men" have "certain unalienable Rights," like "Life, Liberty and the pursuit of Happiness."

• The enforcement and application of these timeless values to specific cases have, by history and constitutional development, been entrusted to our courts and its officers — the lawyers — a trust that lies at the heart of our system of government.[10]

• Therefore, the guardians of that trust — the judges and lawyers, or one or more of them — cannot have as their mission in life the incitement of racial hatred in order to destroy those values.

Commencing with Jefferson's ringing declaration that all men are created equal, and continuing with the adoption of our Constitution, the Emancipation Proclamation and the Fourteenth Amendment, the moral, ethical and legal struggle for the precious values contained in those writings has been costly, difficult and long. The Bar and our courts, charged with the duty of preserving those values, cannot allow Mr. Hale or any other applicant the use of a law license to attempt their destruction.

Finally, and this is the heart of our analysis, the majority's judgment is that to the extent its decision limits the First Amendment activities of lawyers, the fundamental truths identified above are so basic to the legal profession

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10. The Preamble to the Illinois Rules of Professional Conduct states that "The practice of law is a public trust." The Preamble later refers to lawyers "as officers of the court." Both of these concepts appear in Illinois Supreme Court cases throughout this century. See, e.g., *The People v. Payson*, 215 Ill. 476, 486-487, 74 N.E. 383 (1905) and *In re Both*, 376 Ill. 177, 182, 33 N.E.2d 213 (1941). Also see Justice Frankfurter's statement above.

that, in the context of this case, they must be preferred over the values found in the First Amendment. The relationship of the profession to those truths was eloquently described in *Schware v. Board of Bar Examiners*, 353 U.S. 232, 246, 1 L.Ed.2d 796, 806, 77 S.Ct. 752, 64 A.L.R.2d 288, 299 (1957), by the late Justice Felix Frankfurter in a concurring opinion:

> . . . all the interests of man that are comprised under the constitutional guarantees given to "life, liberty and property" are in the professional keeping of lawyers.

The balance of values that we strike leaves Matthew Hale free, as the First Amendment allows, to incite as much racial hatred as he desires and to attempt to carry out his life's mission of depriving those he dislikes of their legal rights.[11] But in our view he cannot do this as an officer of the court.

A preference for antidiscriminatory values over the First Amendment would not be new to Supreme Court decision making. Only five years ago the Court unanimously rejected First Amendment claims that "hate crimes" penalty enhancement statutes were invalid. The Court described Wisconsin's statute:

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11. Under the First Amendment, a state may not criminalize Mr. Hale's actions in preaching racial hatred "except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." *Brandenburg v. Ohio*, 395 U.S. 444, 447, 23 L.Ed.2d 430, 434, 89 S.Ct. 1827 (1969).

> Thus, although the statute punishes criminal conduct, it enhances the maximum penalty for conduct motivated by a discriminatory point of view more severely than the same conduct engaged in for some other reason or for no reason at all. *Wisconsin v. Mitchell*, 508 U.S. 476, 485, 124 L.Ed.2d 436, 445, 113 S.Ct. 2194 (1993).

Nonetheless, the Supreme Court had no difficulty in finding the statute constitutional because "hate crimes" are "thought to inflict greater individual and societal harm." 508 U.S. 476 at 488, 124 L.Ed.2d 436 at 447. Arguably, the rationale in this case for preventing the applicant from becoming an officer of the Court is stronger than it was in the "hate crimes" case.

## CONCLUSION

The late Supreme Court Justice Robert Jackson, America's chief war crimes prosecutor at Nuremberg, wrote during World War II in *West Virginia Board of Education v. Barnette*, 319 U.S. 624, 638, 87 L.Ed. 1628, 1638 (1943);

> The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.

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Jackson's statement that the immutable principles of the Bill of Rights are to be "applied by the courts" has significance because "[t]here . . . comes from the [legal] profession the judiciary." *In re Anastaplo*, 3 Ill.2d 471, 479, 121 N.E.2d 826 (1954). Mr. Hale's life mission, the destruction of the Bill of Rights, is inherently incompatible with service as a lawyer or judge who is charged with safeguarding those rights.

The quotation from *Barnette* is important for another reason. Justice Jackson concluded that "fundamental rights may not be submitted to vote." But Mr. Hale wants to do exactly that, and it is a chilling thought indeed, considering that he and his church are admirers of Adolph Hitler, who acquired his absolute power peacefully, "quite legally" and "in a perfectly constitutional manner."[12]

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12. *The Rise and Fall of the Third Reich, A History of Nazi Germany*, by William L. Shirer, Simon and Schuster, New York 1960, pp. 199 and 187.

For purposes of our discussion, we find no meaningful difference between a destruction of the Bill of Rights that would accompany an election, as opposed to one that would follow a forcible overthrow of the government. As noted, Nazi Germany was created legally, but the Soviet Union arose out of revolution.

Regardless, merely holding private theoretical beliefs favoring either form of change is not a legal basis for disqualifying a bar applicant. Again, see *Baird v. Arizona*, *supra*, and *Re Stolar*, *supra*. Also see *Keyishian v. Board of Regents of New York*, 385 U.S. 589, 599-600, 17 L.Ed.2d 629, 638-639, 87 S.Ct. 675 (1967). However, as Mr. Hale candidly admits, he has crossed a threshold from merely

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If the civilized world had no experience with Hitler, Matthew Hale might be dismissed as a harmless "crackpot." However, history teaches a different lesson. In his defining study of Nazi Germany, William L. Shirer concluded his discussion of Hitler's death camps with the following passage:

> There were some ten million Jews living in 1939 in the territories occupied by Hitler's forces. By any estimate it is certain that nearly half of them were exterminated by the Germans. This was the final consequence and the shattering cost of the aberration which came over the Nazi dictator in his youthful gutter days in Vienna and which he imparted to — or shared with — so many of his German followers.[13]

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(Cont'd)
believing to actively inciting racial hatred for the avowed purpose of abolishing the Bill of Rights except for those of the "white race," and he plans to continue to do this as a lawyer.

Therefore, contrary to the dissent's statement, the majority decision does not require that future applications be scoured to determine each applicant's beliefs and opinions. Clearly, and as discussed, the foregoing Supreme Court cases preclude such an activity by a bar committee. Similarly, the majority concludes, contrary to the dissent, that there is a significant qualitative difference between a bar applicant who may disagree with some of our laws, like the Dram Shop Act for example, and one whose life mission is the incitement of racial hatred for the purpose of abolishing equal justice under law — the very principle that the Bar and our courts are charged with preserving.

13. *Id.*, pp. 978-979.

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While Matthew Hale has not yet threatened to exterminate anyone, history tells us that extermination is sometimes not far behind when governmental power is held by persons of his racial views. The Bar of Illinois cannot certify someone as having good moral character and general fitness to practice law who has dedicated his life to inciting racial hatred for the purpose of implementing those views.

Respectfully submitted this
16th day of December, 1998.

Judge Gregory McClintock,
Chairperson of Inquiry Panel

Stuart Lefstein,
Member of Inquiry Panel

*Appendix D*

***Dissenting Opinion***

Matthew Hale, in his application and interview, plausibly asserts he can hold racist views and practice law in accordance with his oath as an attorney and there's no evidence of any conduct otherwise.

Until there is such conduct, the holding and even active advocacy of beliefs, no matter how repugnant to current law, cannot be the basis for denial of certification to an applicant who will subscribe to the oath. All lawyers disagree with some laws. Otherwise, character and fitness evaluations will have to review the beliefs and scrutinize the papers, speeches and opinions of every applicant to the bar. This type of scrutiny is not a requirement. It is replaced by the applicant's promise to subscribe to the oath and to comply with the Code of Professional Responsibility.

Time will tell if Matthew Hale can in fact practice law in accordance with his oath while holding extremist views. The Rules of the Attorney Registration and Disciplinary Commission of the Illinois Supreme Court are the profession's and the public's protection against any abuse. That such abuse may occur is only speculation at this time. Matthew Hale clearly understands the distinction.

Respectfully submitted this
16th day of December, 1998.

Lawrence W. Baxter,
Member of Inquiry Panel

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Supreme Court, U.S.
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No. 99-1349

In The

# Supreme Court of the United States

MATTHEW F. HALE,

*Petitioner,*

v.

THE COMMITTEE ON CHARACTER AND FITNESS OF THE ILLINOIS BAR, and THE ILLINOIS BAR,

*Respondents.*

**On Petition For Writ Of Certiorari To The Illinois Supreme Court**

## RESPONDENTS' BRIEF IN OPPOSITION

MARC W. MARTIN
*Counsel of Record*
53 W. Jackson Blvd. Suite 1420
Chicago, IL 60604
(312) 408-1111

GEORGE J. MURTAUGH, JR.
53 W. Jackson Blvd. Suite 1112
Chicago, IL 60604
(312) 360-1820
*Attorneys for Respondents*

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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## QUESTION PRESENTED

Should this Honorable Court review a State bar admission committee's decision refusing to certify the petitioner's application for membership in the bar when the record shows that the decision was based upon factual considerations relating to the petitioner's past misconduct, lack of credibility and failure to satisfy his burden of proof?

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## STATEMENT OF THE CASE

### I. OVERVIEW

An applicant seeking admission into Illinois' bar must prove, by clear and convincing evidence, that he has "good moral character." Ill. Sup. Ct. R. 701 & 709(b); Ill. Bar. Admis. R. 4.1.[1]

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[1] Illinois has established a series of procedures, the adequacy of which are not challenged here, by which a bar applicant's proof of "good moral character" is assessed. An applicant must file an application with the Illinois Board of Admissions to the Bar. Ill. Sup. Ct. R. 704(a). The Board forwards the application to the National Conference of Bar Examiners for a character and fitness report. Ill. Sup. Ct. R. 704(b). After receiving the Conference's report, the Board sends the questionnaire to the Committee on Character and Fitness which determines "whether to recommend to the Board that the applicant possesses the requisite character and fitness for admission to practice law." Ill. Bar Admis. R. 4.1. *See also* Ill. Sup. Ct. R. 704(b); Ill. Bar. Admis. R. 3.2c. A Committee member initially evaluates the application. Ill. Bar. Admis. R. 3.2d. If the member is not prepared to recommend certification, a three-member Inquiry Panel assesses the application. Ill. Bar. Admis. R. 3.2d. The Inquiry Panel's review is conducted in the manner determined by the Chairperson, and may entail the applicant's appearance before one or more members. Ill. Bar. Admis. R. 5.2b. When the Inquiry Panel votes to withhold certification, the application is automatically referred to a Hearing Panel for an evidentiary hearing. Ill. Bar. Admis. R. 5.3a. A bar applicant may appeal an adverse Hearing Panel decision to the Illinois Supreme Court, Ill. Sup. Ct. R. 708(d), but the court's review is discretionary. *See also In re Latimer*, 11 Ill. 2d 327, 330, 143 N.E.2d 20, 22 (1957) ("Normally we will not review the discretion exercised by [the Committee], except in the unlikely event that there has been an arbitrary refusal of a certificate.").

After an evidentiary hearing in which Petitioner Matthew F. Hale testified and called witnesses, a five-member Hearing Panel of the Third District Committee on Character and Fitness of the Supreme Court of Illinois issued a written opinion in which it unanimously held that Hale lacked credibility and had failed to satisfy his burden of proving good moral character. Cert. Pet., App. C.[2] While Hale now claims that the Hearing Panel refused to recommend his certification for admission into Illinois bar because of his beliefs and speech, the Hearing Panel, in a decision based upon the "entire record," expressly found that "[t]his case is not about Mr. Hale's First Amendment rights." Cert. Pet., App. C, p. 7a, 8a & 13a.

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[2] Citation format in this response is as follows:

**Citation Form Document Reference**

Cert. Pet. Matthew F. Hale's Petition for *Writ of Certiorari* Cert. Pet., App. A *In re Matthew F. Hale*, M.R. 16075, Illinois Supreme Court Orders dated November 12, 1999, attached in Appendix A of Cert. Pet.

Cert. Pet., App. C *In re Application of Matthew F. Hale*, Hearing Panel's Findings and Conclusions, attached in Appendix C of Cert. Pet.

Cert. Pet., App. D *In re Application of Matthew F. Hale*, Inquiry Panel's Decision, December 16, 1998, attached in Appendix D of Cert. Pet.

Tr. Transcript of Proceedings before the Hearing Panel, April 10, 1999.

HP Ex. Exhibits Offered before the Hearing Panel.

## II. RECORD BEFORE THE HEARING PANEL

In his *certiorari* petition, Hale skimps discussion of the record, and perhaps for good reason, as the record underscores Hale's lack of fitness. We turn to the record before the Hearing Panel:

### A. Hale's Participation in Obstruction of Justice

On May 24, 1991, Hale and his brother carried placards and chanted white supremacist slogans near the University of Peoria. Tr. 182-83; *People v. Hale*, 236 Ill. App. 3d 1113, 655 N.E.2d 333 (3rd Dist. 1992) (Table). A car containing several black men pulled up, and one of them removed a baseball bat. *Id.* Hale and his brother were together in a car. Tr. 182-83. Hale's brother retrieved a handgun from the glove compartment and aimed it at the black men, who then dispersed. Tr. 182-83. Before the Hearing Panel, Hale acknowledged that carrying a concealed weapon was against the law, but maintained that he was "not sure" whether he knew about the gun. Tr. 184.

Hale's brother fled. *Hale, supra*, p. 2. A police officer apprehended the petitioner. *Id.* Hale refused to answer the officer's questions about the gun. Tr. 183-84. After about 30 minutes of riding around in a squad car (while Hale's brother, armed with a deadly weapon, was at large), Hale professed that he did not know the identity of the person with him.[3] Tr. 184-86.

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[3] Hale was convicted of felony obstruction of justice as a result of these events. Although the Illinois Appellate Court

In his Hearing Panel testimony, Hale proclaimed: "I don't lie. I tell the truth." Tr. 183. Hale, however, admitted that he had lied to the police officer on May 24, 1991. Tr. 185-87. Hale scoffed at the Committee's questions on the subject, stating, "I think this whole line of questions are [sic] ridiculous." Tr. 186.

### B. Order of Protection Entered Against Hale

In January 1999, Jaqueline Casillas, an ex-girlfriend of Hale's, sought an order of protection, naming Hale as the respondent. *See* HP Ex. 7. Casillas alleged that Hale was abusive in that he had called her a "mongrel" and a "bitch" (allegations Hale denied before the Hearing Panel, Tr. 267); said that he suspected her of not being "completely white;" asserted that he has had people who disagree with him "watched;" and beckoned her to leave his home or else he would be "forced to humiliate" her. Tr. 259. Hale did not appear in court to contest these allegations because the drive was too far and he did not want to be involved with Casillas. Tr. 257, 265-67. A Champaign County Circuit Court entered an order of protection against Hale, in effect until February 2001. Tr. 257; HP Ex. 7.

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reversed the conviction on *Miranda* grounds, Illinois law permits consideration of the underlying conduct in bar admission proceedings. *See In re Glenville*, 139 Ill.2d 242, 565 N.E.2d 623 (1990); *In re Childress*, 138 Ill. 2d 87, 561 N.E.2d 614 (1990).

### C. Hale's Arrest History

In addition to the obstruction of justice charge discussed above, Hale has a history of arrests:

- In 1990, Hale was arrested for violating a city ordinance for burning an Israeli flag. Tr. 105, 223. Before the Hearing Panel, Hale dismissed the flag-burning incident as a non-crime. Tr. 223.
- Also in 1990, Hale was found guilty of distributing hand bills. Tr. 221-24. Hale failed to mention this incident on his bar application, which asked: "Have you ever either as an adult or juvenile been cited, charged or convicted for any violation of any law?" Tr. 222-24.
- On January 5, 1992, Hale was arrested for assault and battery as a result of a physical altercation with a security officer. Tr. 221-23. According to the arrest report, Hale pushed and attempted to punch the officer, and repeatedly shouted profanities. *See* HP Ex. 2.
- In 1998, Hale was cited for littering based upon his throwing newspapers from an automobile. Tr. 224.

### D. Hale's Disruptive Behavior While in College

In his Hearing Panel testimony, Hale acknowledged that he advocates, as "effective technique," disrupting Holocaust remembrances and black history celebrations. Tr. 198. He did such things during his college days at Bradley University, where, according to Hale, he "made a lot of news." Tr. 230, 246.

Examples of Hale's disruptive behavior while in college include:

- In April 1990, Hale attended a prayer meeting against racism. Tr. 199, 246-47. Hale may have given Nazi salutes at the prayer breakfast, albeit he claimed lack of specific recall before the Hearing Panel. Tr. 246. Hale did not deny leaving (at the prayer meeting) a swastika-emboldened card listing his address and urging membership in the American White Supremacist Party. Tr. 227-28. Hale deemed the card "an educational thing," but admitted that it could have had an insulting effect. Tr. 229. When asked whether he believed that the Nazi salutes were insulting, Hale responded, "No more than if they said that all men are created equal." Tr. 247.

- Bradley University officials placed Hale on disciplinary probation as a result of Hale having violated certain student handbook regulations. Tr. 246; HP Ex. 5.

- A Bradley University disciplinary body held a hearing based upon Hale having called a Mark Cantor a "Jew Boy." Tr. 225-26; HP Ex. 5. Hale did not list this incident on his law school application. Tr. 225-26.

**E. The Roberson Letter**

A few weeks before he commenced law school, Hale wrote a letter to Vicky Roberson in response to her published statements about affirmative action in *The Peoria Journal Star*. The letter stated:

> Your comments appearing in the Saturday, July 22nd issue of The Journal Star were as pathetic as they were asinine. When in the hell are people of your ilk going to face the fact that the nigger race is inferior in intellectual capacity. And I underlined inferior. You have examples all around you, and yet you continue to cling to the misbegotten equality myth, which is not only destroying our universities but also our whole country. Is it going to take your rape at the hands of a nigger beast or your murder before you become aware of the problem. I really do not wish to browbeat you, but the fact is that people like you are more dangerous to the future of this country than the niggers in themselves are. I'm looking forward to the day when our people's eyes are opened and when people who believe in the equality myth no longer have any power to promote this garbage to others. It is about time you face the truth.

Tr. 216-17; HP Exs. 3a, 5; Cert. Pet., App. D, p. 22a.

When questioned about this letter by Hearing Panel members, Hale responded: "I do not believe that my statement is it going to take your rape at the hands of a nigger beast or your murder . . . to be insulting. However, when I stated that her letter was . . . pathetic, it is asinine. People of your ilk, one can construe that as being insulting." Tr. 217. Although Hale said that he would not have written the letter today, he contended that "[t]he rules of professional responsibility . . . don't apply to a fellow in his own house writing his own letter to somebody, to something unrelated to the law." Tr. 244, 249.

### F. The World Church of the Creator

In October 1995, Hale became the "Pontifex Maximus" (the Supreme Leader) of a small, young, "religious" organization known as "The World Church of the Creator." Tr. 166-67, 198; Cert. Pet., App. D, p. 16a.

Hale repeatedly testified that his "church" does not believe in violence. Tr. 167-68, 170, 177, 188-89, 201. However, the "battle cry and greeting" of Hale's "religion," is "RAHOWA," which means "racial holy war." Tr. 200. An internet website maintained by Hale pronounces, "Unless the white race soon becomes aware, aroused, organized, and militant, we will soon be an extinct species." Most of Hale's literature includes the slogan "*Delenda Est Judiacia*," which means "Judaism must be destroyed." Tr. 220. The "Third Commandment" of "Creativity" (the name of Hale's "religion") states, "inferior mud races are our deadly enemies, and most of all is the Jewish race. It is our immediate objective to . . . keep shrinking our enemies." HP Ex. 8. The final bold-face words in the White Man's Bible, a book that Hale "treasures and cherishes," exclaims: "Let us get into the fight today, now! You have no alibi, no other way out, White Man! It's either fight or die!" Tr. 170, 196-97; HP Ex. A.

### G. Hale's Hearing Panel Witnesses

In an effort to prove his good moral character to the Hearing Panel, Hale called an attorney, two members of his "church," two fellow white supremacists and his father as witnesses.

The Champaign, Illinois law firm of Hatch & McPheters employed Hale as a clerk for two and a half months in 1998. Tr. 15, 29. Although not mentioned in Hale's *certiorari* petition, Attorney Brian McPheters testified that he had "a significant reservation" about whether Hale could be an officer of the court. Tr. 32-33. McPheters also believed Hale to have been "certainly less than forthright" in failing to disclose his outspoken white supremacist beliefs (that could have affected the law firm's business and good standing in the community) during the interview process. Tr. 44-47, 50.

Of the two "church" members called by Hale as witnesses before the Hearing Panel, only one, Benjamin Smith, had even met Hale before the hearing. Smith's post hearing killing spree, see *infra*, pp. 11-12, wholly undermines his testimony that he and Hale believed in a "revolution of values" to be accomplished by completely non-violent and legal means. Tr. 160.

The two non-church members called as witnesses, John McLaughlin and Arthur Jones, used their testimony as a forum to propagate hate of minorities and to rally against the Fourteenth Amendment to the United States Constitution. Tr. 75-79, 91-92, 94, 111, 115. As an example of Hale's supposed good character, Jones related that Hale had always appeared on time when they met. Tr. 105. McLaughlin felt that Hale should be certified because there is a need for lawyers to defend white supremacists. Tr. 96.

**H. Hale's Hearing Panel Testimony**

Hale testified that he could swear to protect and defend the United States Constitution, the Illinois Constitution, and the laws of the State of Illinois. Tr. 162-63. Hale, however, acknowledged that the "Sixth Commandment" of his "religion" requires him to put his "own race above every other loyalty." Tr. 192. Hale also averred that "democracy has been twisted," Tr. 176, and declared that "one day we will look back and say how on earth did we view the Constitution as being something alien to our people. I look forward to that day." Tr. 203.

While Hale intends to seek repeal of the Fourteenth Amendment, Hale insisted that his beliefs are consistent with the Fourteenth Amendment, and the Constitution in general. Tr. 188, 208-09. Some of these "consistent" beliefs include a strong objection to multi-racial society, as Hale posited that white individuals should phase out dealings with other races as soon as possible. Tr. 208-09, 233, 236. Hale branded the precept "all men are created equal" an "idiotic notion" since non-white races are inferior. Tr. 189-90, 194, 207. Hale described the average black man as intellectually inferior to the average white man. Tr. 179. Individuals of the Jewish faith also did not escape Hale's wrath. Tr. 234. According to Hale, a self-professed Anti-Semite, Jews are "morally inferior," "morally bankrupt," and "orientals," who should be driven from power and sent "back to Israel." Tr. 187, 193, 207, 234. Hale acceded that he follows the teachings of Ben Klassen, the founder of Hale's "church," who wrote "do not employ

niggers," and advocated "shrinking" the "enemies" of the white race. Tr. 196-97.

Hale maintained that he did not feel torn between his beliefs and professional conduct rules that require an attorney to treat others fairly. Tr. 261. Hale regarded Rule 8.4(a)(5) of the Illinois Rules of Professional Conduct (which prohibits discrimination) as not applying to his private behavior or exercise of religion. Tr. 268-69. Hale theorized that his "personal beliefs would be irrelevant to representation." Tr. 262. Hale also said that he could "deal with blacks." Tr. 261. As an example, Hale disclosed: "when I go to the grocery store, I buy groceries, I don't call them nigger or anything else, I buy groceries and I'm on my way." Tr. 261. While Hale claimed that he could represent minorities, he conceded, "I probably would never have a black client personally." Tr. 235.

## III. ILLINOIS SUPREME COURT PROCEEDINGS

Following entry of the Hearing Panel's decision refusing to certify Hale's bar application, Hale petitioned the Illinois Supreme Court to exercise discretionary review. During the pendency of Hale's petition, and consistent with the proposition that the Illinois Supreme Court's "inherent power to regulate admission to the bar" allows "inquir[y] into events subsequent to the certification," *In re Loss*, 119 Ill. 2d 186, 192-93, 518 N.E.2d 981, 983 (1987), the Committee filed a Motion for Leave to File a Proffer and Argument Concerning Events Occurring after the Hearing Panel's Decision. *See* Cert. Pet., App. A, p. 2a. The proffer cited Hearing Panel witness Benjamin Smith's commission of two murders and a series of armed

assaults on minority group members within days after the Hearing Panel had issued its decision denying Hale's certification, *see, e.g.*, Dedman, Bill, Suspect Sought in Attacks Said to Kill Himself, *New York Times*, July 5, 1999, p. 1, as well as Hale's reactions to Smith's conduct as reported in the media.

On November 12, 1999, the Illinois Supreme Court denied Hale's Petition for Review, as well as the Committee's Motion for Leave to File a Proffer and Argument Concerning Events Occurring after the Hearing Panel's Decision. Cert. Pet., App. A, pp. 1a-2a.

Hale now petitions this Honorable Court to issue a writ of *certiorari*.

## REASONS FOR DENYING THE WRIT

### I. THE DECISION DENYING HALE'S APPLICATION FOR MEMBERSHIP IN THE ILLINOIS BAR IS BASED UPON FACTUAL CONSIDERATIONS RELATING TO HALE'S PAST CONDUCT, LACK OF CREDIBILITY AND FAILURE TO SATISFY HIS BURDEN OF PROOF

"States have a compelling interest in the practice of professions within their boundaries," *Goldfarb v. Virginia State Bar*, 421 U.S. 773, 792 (1975), and are "free to select their own bars." *Konigsberg v. State Bar of California*, 353 U.S. 252, 273 (1957). *See also In re Summers*, 325 U.S. 561, 570-71 (1945). Accordingly, States "can require high standards of qualification, such as good moral character or proficiency in its law, before it admits an applicant to the

bar." *Schware v. Board of Bar Examiners of New Mexico*, 353 U.S. 232, 239 (1957).

In Illinois, a bar applicant shoulders the burden of proving, by clear and convincing evidence, that he has "good moral character and general fitness to practice law." Ill. Sup. Ct. R. 708(b) & 709(b); Ill. Bar Admis. R. 4.1. While Hale objects to perceived ambiguity associated with the "good moral character" standard, it "has long been used as a qualification for membership in the Bar and has served a useful purpose in this respect." *Konigsberg*, 353 U.S. at 262-63.

Hale contends that he has been excluded from Illinois' bar because of his beliefs and speech. The record, however, does not substantiate this claim. The Hearing Panel expressly found that "[t]his case is not about Mr. Hale's First Amendment rights," and refused to recommend certification because Hale lacked credibility and had failed to satisfy his burden of proof. Cert. Pet., App. C, pp. 7a, 8a & 13a. Given the Hearing Panel's stated reasons for refusing certification, and contrary to the argument presented in Hale's *certiorari* petition, this case is resolvable on state law grounds. While it obviously is not the function of *certiorari* to second-guess a State tribunal's factually-dependent determination regarding a litigant's failure to satisfy a burden of proof, grant of *certiorari* essentially would require this Honorable Court to engage in such an analysis.

Moreover, the record amply supports the Hearing Panel's decision. For instance, the Hearing Panel, which heard Hale testify and observed his demeanor, found that "Hale was not candid and open with the panel during the

hearing." Cert. Pet., App. C, p. 12a. This credibility finding is hardly irrational. Indeed, Hale's own witness, Attorney Brian McPheters, described Hale as "certainly less than forthright." Tr. 47. Further, Hale conceded that he lied to the police officer who arrested him after his brother had brandished a pistol at a group of African-Americans.[4] Tr. 185-86. Still more, McPheters harbored "a significant reservation" about whether Hale could be an officer of the court. Tr. 32-33.

Violence in Hale's background also fortifies the Hearing Panel's refusal to recommend certification. Being the driver of a vehicle from which a gun is produced may be considered an act of violence, and under state-law accountability principles, Hale could be considered criminally liable for his brother's actions. *Cf. People v. George*, 263 Ill. App. 3d 968, 636 N.E.2d 682 (1993); *People v. Kosik*, 110 Ill. App. 3d 930, 938-39, 443 N.E.2d 238, 245 (1982). Hale also has been arrested for assault and battery, which by nature are violent offenses. *See* 720 ILCS 5/12-1 (assault); 720 ILCS 5/12-3 (battery). Even more recently (February 1999), an order of protection issued against Hale.

In response to this, Hale complains that the order of protection was based upon an "trivial and isolated incident." Cert. Pet., p. 5. But orders of protection are not entered haphazardly – Illinois law requires a judicial finding that the respondent committed abuse. *See* 725

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[4] Hale also failed to report his conviction for distributing hand bills on his bar application. Tr. 222-24. Hale's law school application omitted mention of certain collegiate disciplinary proceedings. Tr. 225-26.

ILCS 5/112A-14(a); 750 ILCS 60/214(a). That the order entered *ex parte* was a product of Hale's own doing, as he opted not to attend court proceedings because the drive was too far. Tr. 257, 265-67. Certainly, the Hearing Panel, which was not bound by formal rules of evidence, Ill. Bar. Admis. R. 5.3c, was well within its discretion in considering the order of protection.

Hale further claims that the Hearing Panel did not discuss the obstruction of justice incident in its opinion. Hale, however, was questioned extensively about the incident at the hearing. Tr. 182-86. In finding that Hale had not satisfied his burden of proof, the Hearing Panel stressed that it had "considered all the evidence" and "reviewed the entire record." Cert. Pet., App. 8a, 11a & 13a. Consequently, any argument that Hale's obstruction of justice did not factor into the Hearing Panel's decision lacks merit.

In short, this simply is not a case where there are no strikes against the bar applicant's good character. *Cf. Application of Stolar*, 401 U.S. 23, 30 (1971). As opposed to being excluded from Illinois' bar on the basis of beliefs or speech, Hale's past conduct, lack of credibility and inability to meet his burden of proof doomed his bar application. These state law considerations are not fodder for *certiorari*.

## II. THE FEDERAL CONSTITUTION IS NOT VIOLATED WHEN A STATE TRIBUNAL MAKES A REASONABLE PREDICTION ABOUT THE LIKELIHOOD OF FUTURE MISCONDUCT

A State undoubtedly has a legitimate interest in determining whether a bar applicant has the requisite character to become a member of the bar. *See Application of Stolar*, 401 U.S. 23, 29 (1971) (plurality); *Baird v. Arizona*, 401 U.S. 1, 7 (1971) (plurality). Hence, it follows that a bar admission committee, which also must consider the rights of the public, possesses the power, if not the duty, to ensure that prospective lawyers will comply with canons of ethics.

Here, the Hearing Panel determined that Hale had not proved that he could comply with the Rules of Professional Conduct. Cert. Pet., App. C., pp. 8a-12a. The Hearing Panel premised this finding on the testimony of all the witnesses, including Hale, and pointed out that Hale viewed professional conduct rules as applying to him only "when he was actually working as a lawyer, and not at any other time." Cert. Pet., App. C, p. 8a. As the Hearing Panel noted, Hale's view is incorrect. *Id.* at 8a-9a. *See In re Chandler*, 161 Ill. 2d 459, 480, 641 N.E.2d 473 (1994) ("It is our duty to supervise the professional conduct of lawyers practicing in Illinois, and fulfillment of that duty necessarily requires inquiry into the private conduct of attorneys to the extent that such conduct relates to professional competence or the dignity of the legal profession."). Furthermore, Hale's "own words" led the Hearing Panel to conclude that he "intends to follow the Rules only when he feels like it, and feels free to disregard them at any time, as he deems necessary." Cert.

Pet., App. C, p. 9a. This factual determination was plainly grounded in a first-hand evaluation of Hale's testimonial demeanor, and is not subject to upset by a court of review.

While Hale objects to the predictive features of the Hearing Panel's opinion, a State does not violate the Constitution when it reasonably assesses the likelihood of future misconduct. As this Court has stated, "from a legal point of view there is nothing inherently unattainable about a prediction of future criminal conduct." *Schall v. Martin*, 467 U.S. 253, 278 (1984). *See also Jurek v. Texas*, 428 U.S. 262, 275 (1976) (plurality) ("prediction of future criminal conduct is an essential element in many of the decisions rendered throughout our criminal justice system"). Indeed, this Court has approved the use of past misconduct to predict future misconduct in a variety of contexts. *See, e.g., Kansas v. Hendricks*, 521 U.S. 346 (1997) (civil commitment); *United States v. Salerno*, 481 U.S. 739, 751 (1987) (bail worthiness); *Skipper v. South Carolina*, 476 U.S. 1, 5 (1986) (sentencing). Bar admission proceedings should be no different, especially in view of the Committee's unquestioned duty of protecting the public from unsavory attorneys.

Moreover, this Court accords substantial weight "to government employers' reasonable predictions of disruption, even when the speech involved is on a matter of public concern." *Waters v. Churchill*, 511 U.S. 661, 673 (1994). The same should hold true here. Given Hale's history of brushes with the law, disruptive behavior, misconduct and lack of veracity, the Hearing Panel's finding that Hale would not abide by professional conduct rules is well-supported by the record.

## III. THE FIRST AMENDMENT DOES NOT REQUIRE HALE'S ADMITTANCE TO ILLINOIS' BAR

Hale's contention that he has been excluded from Illinois' bar because of his beliefs and speech initially flows from a faulty legal premise. Hale cites *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940), for the proposition that "[f]reedom to believe what one will 'is absolute.' " Cert. Pet., p. 6. Hale, however, fails to cite the other half of *Cantwell's* syllogism, that is, "[c]onduct remains subject to regulation for the protection of society." *Cantwell*, 310 U.S. at 304. In addition, Hale overlooks the fact that certain types of speech do not enjoy First Amendment immunity, *Bose Corp. v. Consumer Union of United States*, 466 U.S. 485, 503-04 (1984) (discussing various categories), including malicious nomenclature of the kind endorsed by Hale, *see, e.g., People v. Beauharnais*, 408 Ill. 512, 517, 97 N.E.2d 343 (1951), *aff'd*, 343 U.S. 250 (1952), *Chaplinsky v. New Hampshire*, 315 U.S. 568, 572 & 574 (1942), as well as instances in which racial enmity motivates conduct. *See Wisconsin v. Mitchell*, 508 U.S. 476 (1993).

Hale maintains that "[l]awyers do not relinquish their constitutional rights as a condition of practicing law," Cert. Pet., p. 8, but fails to come to grips with the principle that "[m]embership in the bar is a privilege burdened with conditions." *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1066 (1991) (quoting *In re Rouss*, 221 N.Y. 81, 84, 116 N.E.2d 782, 783 (1917) (Cardozo, J.)). An attorney's unfettered right to free speech both inside and outside the courtroom is limited. *See Gentile*, 501 U.S. at 1071. *See also Florida Bar v. Went For It, Inc.*, 515 U.S. 618

(1995). As opposed to being an absolute right, attorney speech is subject to a balancing test. *Gentile*, 501 U.S. at 1075 ("When a state regulation implicates First Amendment rights, the Court must balance those interests against the State's legitimate interest in regulating the activity in question.").

Beyond peradventure, Illinois has a strong interest in preventing racial discrimination by representatives of its justice system. *See Georgia v. McCollum*, 505 U.S. 42, 50 (1992) (racial discrimination is "repugnant in all contexts"); *Edmonson v. Leesville Concrete Co., Inc.*, 500 U.S. 614, 618 (1991) ("over a century of jurisprudence [has been] dedicated to the elimination of race prejudice within" the justice system; "racial discrimination mars the integrity of the judicial system and prevents the idea of democratic government from becoming a reality"). As evident from *Edmonson* and *McCollum* (which outlawed racially discriminatory peremptory challenges by private attorneys), a State has the authority to prevent private attorneys from resorting to racial animus in the practice of law.

Albeit the record does not support the argument that Hale has been excluded from Illinois' bar because of beliefs or speech, even if that were the case, the First Amendment would not be violated under the present circumstances. Stated simply, Illinois' legitimate interest in preventing racial discrimination outweighs Hale's interest in spewing racial venom.[5] This Honorable Court,

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[5] *Bond v. Floyd*, 385 U.S. 116 (1966), does not require Hale's bar admittance. Unlike bar admission proceedings in which an

however, need not navigate these waters since, in the first instance, factors independent of Hale's beliefs or speech engendered his exclusion from Illinois' bar.

## CONCLUSION

For the reasons stated above, the petition for *certiorari* should be denied.

Respectfully submitted,

MARC W. MARTIN
*Counsel of Record*
53 W. Jackson Blvd. Suite 1420
Chicago, IL 60604
(312) 408-1111

GEORGE J. MURTAUGH, JR.
53 W. Jackson Blvd. Suite 1112
Chicago, IL 60604
(312) 360-1820
*Attorneys for Respondent*

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ability to conscientiously take an oath constitutes an element of the good moral character eligibility requirement, *Law Students Civil Rights Research Council, Inc. v. Wadmond*, 401 U.S. 154, 166 (1971), an ability to take the oath in good faith was not an independent eligibility requirement for the publically-elected House of Representatives' position in *Bond*. The *Bond* Court also emphasized that its ruling could be different if the oath-taker promised to take the "oath pro forma while declaring or manifesting his disagreement with or indifference to the oath." 385 U.S. at 132. That is the case here, where Hale admitted that his "religion" requires him to place his "own race above every other loyalty." Tr. 192. But more so than his inability to take the oath in good faith, Hale's non-certification was caused by his past misconduct, lack of credibility and failure to meet his burden of proof.

Supreme Court, U.S.
FILED
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No. 99-1349

**IN THE**
**SUPREME COURT OF THE UNITED STATES**

Matthew F. Hale,
*Petitioner*

v.

THE COMMITTEE ON CHARACTER AND FITNESS OF THE ILLINOIS BAR, and THE ILLINOIS BAR,
*Respondents.*

**ON PETITION FOR A WRIT OF CERTIORARI TO THE ILLINOIS SUPREME COURT**

# REPLY TO BRIEF IN OPPOSITION

Robert Herman
*Counsel of Record*
Schwartz, Herman
& Davidson
University Club Tower
1034 South Brentwood
Suite 1800
St. Louis, Missouri 63117
(314) 862-0200

Anita Rivkin-Carothers
*33 North LaSalle*
Suite 3300
Chicago, IL 60602
(312) 641-2901

ATTORNEYS FOR PETITIONER

5pp

Respondents acknowledge their true intentions when they proclaim, "Illinois' legitimate interest in preventing racial discrimination outweighs [Petitioner's] interest in spewing racial venom." Brief in Opposition, p. 19. Respondents thereby directly address the important Constitutional question raised in the Petition for Certiorari: Whether the Illinois Bar may constitutionally exclude Petitioner on the basis of his beliefs.

Respondents' recitation of the record underscores the Illinois Bar's reliance on Petitioner's speech and views as the basis for his exclusion from the Bar. Respondents' Brief in Opposition invokes Petitioner's politically offensive speech and invites this Court to share in the Illinois Bar's moral outrage at Petitioner's views and rhetoric. Respondents' Brief in Opposition devotes many pages to discussion of the offensiveness of Petitioner's speech expressed in the Roberson letter (Brief in Opposition, pp.6-7), the offensiveness of Petitioner's rejection of the principles of Equal Protection (Brief in Opposition, pp.10-11), the offensiveness of the views expressed by Petitioner's World Church of the Creator and its supporters (Brief in Opposition, pp.8-9), the offensiveness of the racially motivated name-calling that was the basis for the order of protection (Brief in Opposition, p. 4), and the "disruptive behavior" consisting of "Nazi salutes," swastikas, using the term "Jew-Boy," and racist leafleting.[1] (Brief in Opposition, pp. 5-6).

The flood of ink Respondents devote to Petitioner's speech negates Respondents' repeated protestations that Petitioner's First Amendment Rights are not at issue.

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[1] Respondents' cryptic reference to "violation of student handbook regulations," Brief in Opposition, p.6, is shown by the trial transcript to be distributing flyers without administration prior approval. Tr. 246.

When Petitioner's views and rhetoric are redacted, Respondents are left with citations to Petitioner's incidental arrests[2] and convictions for ordinance violations,[3] and allegations related to Petitioner's exercise of his Constitutional Rights.[4] None of these allegations are cited in any of the written decisions of the Illinois Bar as sufficient or independent grounds for Petitioner's rejection.[5] Respondents' attorneys should not now be allowed to dredge the record for grounds that were previously rejected by the Committee and Inquiry Panel.[6]

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[2] The fact of arrest is itself meaningless. *Schware v. Board. of Bar Examiners*, 353 U.S. 232, 241, 77 S.Ct. 752, 757, 1 L.Ed. 796 (1957).

[3] Respondents concede that:

> [t]he Inquiry Panel attaches no significance to these convictions because countless individuals have been admitted to the Bar with more serious criminal violations. Additionally, the Inquiry Panel has doubts as to the legality or at least the appropriateness of these convictions because they related to the exercise of constitutionally protected activity and [Petitioner] may have been selectively prosecuted on account of his views. (Appendix D, p. 19a. ft.nt. 2.)

[4] The so-called obstruction of justice charge was based on Petitioner's 1991 statement in answer to police interrogation that he did not know who had possessed a gun. The conviction was overturned by the Illinois Court of Appeals because the statement was coerced from Petitioner in violation of his Constitutional Rights. Neither the written decisions of the Bar Committee, nor the Inquiry Panel, addressed this matter whatsoever, though it was disclosed by Petitioner and was the subject of testimony at the hearing.

[5] The Illinois Supreme Court has held that even a prior felony conviction will not automatically and necessarily preclude admission to the Illinois Bar. *In re Polito*, 387 N.E.2d 278, 281-82 (Ill. 1989).

[6] See *Konigsberg v. the State Bar of California*, 353 U.S.252, 258, 77 S.Ct. 722, 726, 1 L.Ed. 2d 810 (1957), where the Supreme Court rejected the California Bar's attempt to cast Konigsberg's rejection as a factual matter of state law for his "refusal to answer relevant inquiries" where "[n]either the Committee as a whole nor any of its members ... suggested that his failure to answer their questions was, by itself, a sufficient independent ground for denial of his application."

Respondents fail to identify any instance justifying the catchall, ambiguous accusation of Petitioner's "lack of candor."[7] Petitioner answered all questions posed to him by the application[8] and at the hearing. Respondents' true complaint is that Petitioner failed to keep his "offensive" views to himself.[9]

Respondents' disapprobation of Petitioner's views and rhetoric is the basis for Petitioner's exclusion at every stage of the Illinois Bar's decision-making: from Petitioner's initial interview to these very proceedings. Respondents' Brief in Opposition is no exception.

While Respondents indignantly deny that Petitioner's exclusion is related to his exercise of First Amendment Rights, Respondents' acknowledgement that the basis of this case is "whether [Petitioner] can put aside his beliefs and comply with the rules of Professional Conduct," (Committee decision, App. C., p. 10a) belie their self-serving protestations.

Respondents and Petitioner both present the identical important constitutional issue to be resolved by this

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[7] Candor, like the term "good moral character," is incapable of adequate definition and often used as a pretext for the punishment of constitutionally protected rights. *Konigsberg v. the State Bar of California*, 353 U.S.252, 262, 77 S.Ct. 722, 728, 1 L.Ed. 2d 810 (1957).

[8] Respondents' suggestion that Petitioner did not disclose arrests or convictions for ordinance violations is misleading. Petitioner accurately disclosed the fact of arrests and convictions for these ordinance violations, but the application supplement asked for disclosure of "criminal charges." Tr. 222. Ordinance violations are not considered criminal charges under Illinois law. *City of Chicago v. Pudlo*, 648 N.E.2d 135, 137 (Ill. App. 1995). Nor did either of the Bar's written opinions cite Petitioner for failure to adequately disclose any information.

[9] *See, e.g.*, Respondents' reference, Brief in Opposition, p. 9, to a character witness who had "reservations" about Petitioner's expression of racial prejudice. Tr. 32

Court: Whether the First Amendment allows the Illinois Bar to exclude Petitioner because his beliefs and advocacy run counter to the principles of racial equality to which the Bar aspires. This case rests squarely on Federal Constitutional issues and cannot be resolved as a matter of state law. Petitioner's Writ of Certiorari should be granted by this Court.

Respectfully submitted,

Robert Herman
*Counsel of Record*
Schwartz, Herman & Davidson
University Club Tower
1034 South Brentwood
Suite 1800
St. Louis, Missouri 63117
(314) 862-0200
ATTORNEY FOR PETITIONER